

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9364 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

DECEASED MANUBHAI BHIKHABHAI PATEL

Versus

COLLECTOR

Appearance:

MR RN SHAH for Petitioners

Ms AMY YAGNIK, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/02/99

ORAL JUDGEMENT

Rule. Ms Amy Yagnik, learned AGP waives service of Rule for respondent No. 1.

2. In this petition under Article 226 of the Constitution, the petitioners have challenged the order dated 29.8.1998 passed by the Additional Chief Secretary (Appeals) in the Revenue Department of the State Government dismissing the petitioners' revision application against the order dated 26.9.1993 passed by

the Collector, Valsad rejecting the petitioners' application for renewal of the lease in respect of brick waster land near Block No. 569 of village Saibujrang, Taluka Gandevi of District Valsad (now District Navsari).

3. Manubhai Bhikhabhai Patel (since deceased) was granted lease of the aforesaid land admeasuring 3000 sq.mtrs. for the purpose of running a brick kiln as per the Collector's order dated 6.1.1986 for a period of one year and thereafter the lease was renewed for a period of five years from 1.8.1886 to 31.7.1991. The deceased again applied for renewal on 24.7.1991, but the application for renewal came to be rejected by the then Collector, Valsad by the impugned order dated 26.9.1993 (Annexure "B"). The order did not contain any reason. The deceased carried the matter in revision before the State Government. On account of the death of the original lessee on 1.6.1997, his heirs-the present petitioners were brought on record. By the impugned order dated 29.8.1998 the State Government has rejected the revision application on the ground that deceased-Manubhai was granted lease of land admeasuring 3000 sq.mtrs. but now the petitioners want only 1000 sq.mtrs and that too only on lease basis and that the petitioners do not want to purchase the land. The Additional Chief Secretary further observed in the order that the deceased had continued to occupy the land unauthorisedly even after expiry of the lease period. It is further observed in the order of the Additional Chief Secretary that the land in question is within a radius of 10 Kms. from the limits of the Bhilimora Municipality and appears to be near the coastal highway.

4. The learned counsel for the petitioners submits that since the deceased had already made an application for renewal of the lease, the deceased was expecting the order of the Collector on such application and, therefore, the deceased or his heirs cannot be said to be trespassers. At the most the deceased-petitioner was a tenant holding over and both the Collector as well as the Additional Chief Secretary have erred in rejecting the petitioners' application for renewal of the lease on grounds which cannot be said to be germane to the purpose for which the power is to be exercised.

The learned counsel for the petitioners further states that the lands adjoining the land in question are also given either on lease basis or permanently sold to other persons and, therefore, there is no justification for denying renewal of the lease to the petitioners. However, in any view of the matter, the petitioners are

prepared to take the entire land admeasuring 3000 sq.mtrs. either by way of lease or by way of sale. If for any valid reason, the entire land admeasuring 3000 sq.mtrs. cannot be given to the petitioners, the petitioners are prepared to take on lease basis or sale basis the smaller land but not less than 1000 sq.mtrs.

5. The learned AGP has supported the orders of the Collector as well as the Additional Chief Secretary.

6. Having heard the learned counsel for the parties, it appears that there is considerable substance in the grievance being made by the learned counsel for the petitioners. When a person is given land on lease and on expiry of the lease period, if the lessee applies for renewal of the lease, till an appropriate order is passed by the Competent Authority, it cannot be said that the lessee holding over the land in a trespasser. Such a lessee may have legitimate expectation of having his lease renewed. Moreover, it appears from the order of the Additional Chief Secretary that during pendency of the revision application there was interim say operating in favour of the petitioners for some time and even during pendency of this petition also, the ad-interim protection is granted to the petitioners qua possession of the land in question. Under the circumstances, the petitioners cannot be said to be in unauthorized occupation of the land in question. The learned counsel for the petitioners also fairly states that the petitioners shall pay arrears of rent for the period from 1.8.1991 till 28.2.1999 at the rate at which the rent was being paid by deceased-Manubhai Bhikhabhai Patel as per the agreement for the period upto 31.7.1991.

Moreover, in view of the fact that the lands surrounding the land in question are already granted to others on lease or sale basis and no other person has applied for the land in question as stated at the bar, it will be just and proper to set aside the order of the Collector as well as the Additional Chief Secretary at Annexures "B" and "C" respectively and to remand the matter to the Collector, Navsari to reconsider the application for renewal after giving the petitioners an opportunity to indicate their choice in such order as they may like to give regarding area required, sale basis or lease basis and thereafter the Collector shall pass appropriate orders for deciding whether to grant the land on lease or on sale basis to the petitioners and for how much area. It is directed accordingly.

7. Since the matter is pending since 1991, the

aforesaid exercise shall be undertaken by the Collector as expeditiously as possible and in any case within a period of three months from the date of receipt of a certified copy of this order.

Until the Collector takes a final decision in the matter, the petitioners shall not be dispossessed from the land in question.

8. This order is passed subject to the condition that the petitioners shall pay the arrears of rent for the land in question at the rate at which the rent was being paid by deceased Manubhai Bhikhabhai till 31.7.1991, for the aforesaid period from 1.8.1991 till 28.2.1999, latest by 31.3.1999.

9. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

February 19, 1999 (M.S. Shah, J.)

sundar/-